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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/567,369	05/15/2006	Noboru Ichinose	PKHF-04053US	9867
21254 7590 08/17/2009 MCGINN INTELLECTUAL PROPERTY LAW GROUP, PLLC 8321 OLD COURTHOUSE ROAD SUITE 200 VIENNA, VA 22182-3817				
EXAMINER SALERNO, SARAH KATE				
ART UNIT 2814		PAPER NUMBER		
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

ADVISORY ACTION (continuation of page 1)

The request for reconsideration has been considered but does not place the application in condition for allowance because of the follow reasons:

1. Applicant argues that the proposed rejection using Ichinose (2004/0007708) does not teach or suggest "a second layer obtained by replacing a part rather than all of oxygen atoms of the first layer with nitrogen atoms". Applicant's arguments are not persuasive because "The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process." In re Thorpe, 777 F.2d 695, 698, 227 USPQ 964, 966 (Fed. Cir. 1985). Therefore the claim limitation "obtained by replacing a part rather than all of the oxygen atoms of the first layer with nitrogen atoms" is not given patentable weight because it is a process of making the second layer within a product claim. Further Figure 7 shows the structural product of claim 1 teaches a first layer (1) comprising a Ga₂O₃ system single crystal substrate and a second layer (1a) comprising GaN as required by dependent claim 2.
2. Applicant argues that the proposed rejection using Itoh (6,218,207) does not teach the limitation "'a first layer comprising a GaO₃ system single crystal". Applicant is correct and the Final rejection dated 03/17/2009 under 35 USC § 102(b) using Itoh is withdrawn.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to SARAH K. SALERNO whose telephone number is (571)270-1266. The examiner can normally be reached on M-R 8:00-4:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wael Fahmy can be reached on (571) 272-1705. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Wael M Fahmy/
Supervisory Patent Examiner, Art
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/S. K. S./
Examiner, Art Unit 2814